SUPREME COURT OF THE UNITED STATES.

No. 5.

EX-PARTE THE UNITED STATES

VERSUS

NEW ORLEANS.

IN THE MATTER OF THE UNITED STATES
vs.
THE MAYOR, ALDERMEN, AND INHABITANTS OF THE CITY OF NEW ORLEANS.

Answer of Hon. Samuel H. Harper.

The answer and return of Samuel H. Harper, judge of the district court of the United States for the eastern district of Louisiana, to the rule granted by the Supreme Court of the United States at the January term of said court in the above entitled cause, a copy of which said rule is hereto annexed, most respectfully shows: That the writ of mandamus mentioned in the rule aforesaid ought not to be awarded.

1st. Because the cause of the United States against the Mayor, Aldermen, and Inhabitants of the city of New Orleans, in which case the order or decree of the said district court of the 19th February, 1834, mentioned in the said rule, and proposed to be appealed from on the part of the United States was made, had long before the said 19th day of February, 1834, been decided and disposed of by a final decree or judgment of the said district court on the merits, and the said cause removed from the said district court to the Supreme Court of the United States by appeal, where the same was then, and still is pending.

2d. Because the said order or decree of the said 19th February, 1834, set forth in said rule, is no order or decree made in, or concerning the said cause, matter, or any plea, or thing involved therein, but is only an ex-parte order fixing the allowance made to commissioners appointed by, and under the authority of the said district court, to sell and dispose of the property in litigation in the said suit pending the said appeal, which proceeding was had, and the appointment of said commissioners made under a consent rule, which said consent rule forms a part of the record of the proceedings, and is the basis of every thing done in the said cause in the said district court subsequent to said appeal.

A true copy of which said consent rule is hereto annexed, and marked A, and submitted as part hereof.

3d. Because if the said order or decree of the 19th February, 1834, be an order or decree made in said cause, it is not such a final judgment or decree as may be appealed from, but is merely interlocutory.

JAMES H. HARPER, Judge U. S.

New Orleans, 31st December, 1835.

SUPREME COURT OF THE UNITED STATES,

JANUARY TERM, 1835.

EX-PARTE: IN THE MATTER OF THE UNITED STATES vs. THE MAYOR, ALDERMEN, AND INHABITANTS OF NEW ORLEANS.	On motion for a rule on the district judge of the United States for the eastern district of Louisiana.

Mr. Attorney General, in behalf of the United States, moved the court for a rule on the district judge of the United States for the eastern district of Louisiana, to show cause why a writ of mandamus should not be issued, to him directed, commanding him to allow and enter the appeal proposed and offered by the district attorney of the United States from the order and decree of the said judge, on the 19th day of February, in the year of our Lord 1834, in the case of the United States against the Mayor, Aldermen, and Inhabitants of New Orleans. On consideration whereof, it is now here ordered and adjudged by this court, that the rule as prayed for be and the same is hereby granted returnable on the second Monday of January, Anno Domini 1836, being the first day of the next January term of this court.

I, William Thomas Carroll, clerk of the Supreme Court of the United States, do hereby certify that the above is a true copy of the order of said Supreme Court, made in said cause at January term eighteen hundred and thirty five.

Extracted from the minutes of said Supreme Court.

In testimony whereof, I hereunto subscribe my name, and affix the [L. S.] seal of said Supreme Court, this twentieth day of March, in the year of our Lord one thousand eight hundred and thirty-five.

WM. THOS. CARROLL,
Clerk of the Supreme Court of the United States.

A.—No. 2179.

THE UNITED STATES vs. THE MAYOR, ALDERMEN, AND INHABITANTS OF NEW ORLEANS.	Consent rule entered into between the parties.

On reading and considering the allegations and prayer of the petitioners, and with the assent of the district attorney of the United States, founded on his instructions from the Treasury Department of the United States, herewith filed, it is ordered by the court, that the sale of the property mentioned in the petition take place on the conditions stipulated in the supplemental petition of the petitioners. And for the purpose of carrying into

effect the expressed wishes of the parties to the within entitled cause, and with the assent of the counsel for the corporation of New Orleans and of the said district attorney, it is further ordered, that Denis Prieur, esq., be appointed a commissioner on the part of said corporation, and that Franklin W. Lea, esq., be appointed a commissioner on the part of the United States, upon their entering into bond and security, to be approved by the court, in the sum of sixty thousand dollars, with the condition that they will faithfully execute the trust to them confided, and that they will deposite in court, subject to its further order, immediately after the receipt thereof, all such money and notes as they may receive for the sale of said property.

Signed SAMUEL H. HARPER,
December 11th, 1833. Judge U. S.

CLERK'S OFFICE, *U. S. District Court*,
NEW ORLEANS, Dec. 31st, 1835.

I certify the foregoing to be a true copy from the original on file in this office.

DUNCAN N. HENNEN, Clerk.